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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2003 Assembly Bill 792</b>	<b>Assembly Substitute Amendment 1, Assembly Simple Amendment 5, and Assembly Simple Amendment 6</b>
<i>Memo published: March 4, 2004</i>	<i>Contact: Nicholas Zavos, Staff Attorney (266-1308)</i>

Assembly Substitute Amendment 1 and Assembly Simple Amendment 5 make the following changes to 2003 Assembly Bill 792:

1. The substitute amendment changes the definition of “covered loan.” The **bill** defines “covered loan” as one in which: (a) the annual percentage rate at consummation will exceed, by more than 8% for first-lien loans or by more than 10% for subordinate-lien loans, the yield on specified U.S. Treasury securities; or (b) the total points and fees payable by the consumer at or before loan closing will exceed the greater of 8% of the total loan amount or \$400. The **substitute amendment** lowers the percentage trigger in the second category. Under the substitute amendment, a loan will be considered a covered loan if the total points and fees payable by the consumer at or before loan closing will exceed 6% of the total loan amount. **Assembly Simple Amendment 6** exempts certain fees from the 6% limit. Under Assembly Amendment 6, reasonable fees paid to affiliates and nonaffiliates of the lender for services such as title insurance, loan-related document preparation, and property inspection are not included in calculating the “total points and fees.”
2. The substitute amendment places a greater restriction on balloon payments. The **bill** prohibits a lender from requiring a payment that is more than twice as large as the average of all earlier scheduled payments, unless the payment is due 60 months after the loan is made. The **substitute amendment** removes this 60-month window, so that such payments are prohibited regardless of when they are required. Both the bill and the substitute amendment exempt bridge loans and loans that are adjusted to account for seasonal or irregular income of the borrower.
3. The **bill** prohibits a lender from engaging in a pattern or practice of making covered loans to individuals who have collateral, but who, considering their current and expected income, would be unable to make the scheduled payments. The bill also provides a list of some

things that a lender could consider in making its assessment. The **substitute amendment** deletes that list of items to consider, and requires the Department of Financial Institutions to create by rule guidelines for determining a borrower's ability to repay a covered loan. **Simple Amendment 5** modifies the prohibition to eliminate the requirement that the lender engage in a "pattern or practice." Under Simple Amendment 5, a lender may not make covered loans based only on the borrower's collateral. Finally, the **substitute amendment** states that a lender is presumed to have violated this prohibition if the lender engages in a pattern or practice of making covered loans without verifying and documenting the lender's ability to pay.

4. The **substitute amendment** adds a prohibition against financing credit insurance. With certain exceptions, a lender may not finance through a covered loan credit life, credit accident and health, credit disability, or credit unemployment insurance on a prepaid single premium basis sold in conjunction with the covered loan. Generally speaking, those types of insurance insure the debtor against certain events for an amount sufficient to pay the debtor's debt, with the creditor as the beneficiary.
5. The **substitute amendment** adds a prohibition against refinancing or consolidating certain loans. No lender may knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first 10 years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing.
6. The **substitute amendment** places additional limitations on prepayment penalties. Permissible prepayment penalties are limited to the first 36 months after the loan is consummated, and the lender must offer the borrower the option of a loan product that does not have a prepayment penalty.
7. The **substitute amendment** exempts certain personal property and household goods from being used to satisfy a judgment related to a covered loan.
8. The **substitute amendment** provides state financial institutions parity with federal financial institutions in terms of the application of the bill. If federal law preempts or prohibits the application of the bill to any federally chartered bank, trust company, savings and loan association, savings bank, or credit union, then the bill does not apply to the same type of state-charted financial institution to the same extent as the federal preemption.

On February 26, 2004, the Assembly Committee on Financial Institutions adopted Assembly Substitute Amendment 1 and Assembly Simple Amendment 5 by a vote of Ayes, 15; Noes, 0; and Absent, 1. Assembly Simple Amendment 6 was adopted on the floor of the Assembly on March 2, 2004.

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